

EXHIBIT 3

Curling, Donna v. Raffensperger, Brad

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 DONNA CURLING, et al.,

5 Plaintiffs, CIVIL ACTION FILE

6 vs. NO. 1:17-cv-2989-AT

7 BRAD RAFFENSPERGER, et

8 al.,

9 Defendants.

10
11
12 DEPOSITION OF
13 JEFFREY SCHOENBERG

14 October 19, 2021

15 10:02 a.m.

16
17 TAKEN BY REMOTE VIDEO CONFERENCE

18 LaRita J. Cormier, RPR, CCR-2578
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1 the top half of it, top half of the first page.

2 Q. Okay. Do you recognize this document?

3 A. I recognize what the document is.

4 Q. And what is that?

5 A. It says Third Amended Complaint.

6 Q. Okay. And you see the date at the top
7 there in blue, October 15, 2019?

8 A. I do see that.

9 Q. Okay. And if you'll turn with me to page
10 5, paragraph 8. You with me?

11 A. I am.

12 Q. And so that paragraph reads, quote, "This
13 case is not merely about a technical violation or a
14 theoretical risk. It is about forcing voters to
15 choose between totally relinquishing their right to
16 vote, acquiescing to cast their vote despite very
17 real risks: the risk that their vote will not be
18 properly counted, the risk that the declared results
19 will be contrary to the will of the voters; and
20 furthermore, the risk that there will be no way to
21 verify validity of the election." Do you see that?

22 A. I do.

23 Q. And does that accurately summarize your
24 allegations in this case, that this is about risks?

25 MS. ELSON: Object to form.

1 A. I don't dispute what's written here. I
2 would not characterize this case as being only about
3 risk by any stretch. Once you acquiesce, the risk
4 has been realized. You are suffering harm by voting
5 in an unverifiable way. I would not allow you to
6 characterize my stand here as -- you know, this is
7 not a speculative thing. This is not only about
8 risk. This is, the reality is I have been damaged
9 because my vote has not been reliably counted as
10 cast.

11 BY MR. MILLER:

12 Q. Going to ask you a couple questions about
13 what you just said there. When you say that your
14 vote has not been reliably counted as cast, do you
15 have any basis for that assertion?

16 A. Yes. The fundamental weaknesses of this
17 system is the evidence of what I just said.

18 Q. And what are those fundamental weaknesses?

19 A. There's no verifiable, human verifiable
20 record of my intent. So that when reportedly the
21 vote gets tallied, there's no way of saying
22 afterwards that it reflected what I intended to have
23 happen with my vote. I know after every vote I cast
24 on the system that I have essentially put my vote
25 into -- my intended vote into a black box, and what

1 comes out the other side may or may not be what I
2 intended, which is a harm to me. My vote is a
3 precious thing to me. It's -- it is my voice. It's
4 my participation in democracy and it's valued. And
5 I don't know for certain that it's getting heard.

6 Q. And so with respect to -- I think you
7 mentioned there that your vote was not verifiable.
8 Is that accurate?

9 A. Yes.

10 Q. Okay. And can you explain to me what you
11 mean by verifiable?

12 A. So the DRE system takes my touch of a
13 screen, turns it into a QR code that I couldn't read
14 when I was at the poll. I don't know if the QR code
15 accurately reflected what I intended or not; nor do
16 I know, frankly, that the QR code is getting read
17 properly later in the process. But regardless of
18 whether or not the system works, you know, there are
19 technical things in the system that are working or
20 not working, I will never know if my input was
21 correct. The only thing that gets assessed
22 afterwards is the bar code. That's insane.

23 Q. Okay. And I think you may have misspoke.
24 I don't want to put words in your mouth but you
25 referred to the DRE system.

1 A. I'm sorry. That was about the BMD system.
2 If I spoke improperly, it was a mistake.

3 Q. And so, in essence here, then, your qualm
4 or concern is with verifying the QR code; is that
5 right?

6 A. The utter possibility of that in the system
7 is a problem, yes.

8 Q. Because that is what's scanned in the
9 ballot scanner; is that accurate?

10 A. And what's tallied subsequently, yes,
11 that's accurate. And what's audited, given what I
12 understand about the audits. They keep going back
13 to the same set of data.

14 Q. And so explain to me there. Your
15 understanding of the auditing is that the QR code is
16 read again?

17 A. They're re-scanning the QR codes, yeah,
18 making sure that the numbers come up the same as
19 they did before.

20 Q. When you voted on the BMD, do you recall
21 the printed text on the ballot?

22 A. Yes.

23 Q. Did you review that text?

24 A. I personally reviewed the text. I knew my
25 action was a nullity, but I did it all the same

1 because I couldn't help myself.

2 Q. And when you say audit earlier talking
3 about the QR codes, are you referring to the risk
4 limiting audit?

5 A. No. I was referring to whatever the state
6 has attempted to do by way of an audit.

7 Q. Okay. So back to the document here, on the
8 same page, so again we're on page 5, paragraph 10,
9 do you see where the term, quote, "Relevant Previous
10 Elections" is defined for purposes of this
11 complaint?

12 A. Not yet.

13 Q. I'm sorry. I will have to --

14 A. This is paragraph 10.

15 Q. Page 5, paragraph 10, and it rolls over
16 into page 6.

17 A. Okay. I'm on that paragraph.

18 Q. Do you see the paragraph there?

19 A. I do.

20 Q. Okay. And so would you agree with me,
21 then, that here the term "Relevant Previous
22 Elections" means the November 8, 2016, General
23 Election; the April 8, 2017, 6th Congressional
24 District Special Election; the June 20, 2017, 6th
25 Congressional District Runoff election; and the May

1 2018 and November 2018 General Elections? Do you
2 see that?

3 A. I do.

4 Q. And you would agree that collectively those
5 are referred to here as the Relevant Previous
6 Elections?

7 A. Yes.

8 Q. Okay. I don't recall an assertion of
9 claims about the May 18 and November 18 general
10 elections previously. Am I correct there?

11 A. I don't know what you recall.

12 Q. Your previous versions of the complaint
13 didn't assert claims regarding those elections?

14 A. I don't believe so; but then again, I think
15 they were written before those dates.

16 Q. Okay. And so we discussed those other
17 elections before, but any reason to believe the 2018
18 elections were invalid?

19 A. If you use a faulty election system, you
20 have potentially faulty results, so the reason -- as
21 I understand it, the reason these additional
22 elections were included is that the complaint is
23 relevant as to up until the point where this gets
24 corrected. Every election on these systems are --
25 including the BMD system is flawed because of these

1 unverifiable, unreliable, because it cannot be
2 properly audited. There is no -- there is no record
3 to tell me that these elections are properly counted
4 and that my vote particularly gets counted as cast.

5 Q. Do you have any reason to believe the 2018
6 election results were manipulated in any way?

7 A. I don't have any evidence of that, nor do I
8 have evidence to the contrary.

9 Q. But you're not contending that is the case;
10 right?

11 A. No.

12 Q. Not contending that the incorrect winners
13 were certified in those elections?

14 A. I am not contending that. I don't have
15 evidence of that. But I do not have evidence to the
16 contrary. I don't believe these could be properly
17 certified because the system is fundamentally
18 flawed.

19 Q. Okay. If you'll turn with me to page 8,
20 pages 8 and 9 of the document, paragraph 17. If
21 you'll just let me know when you're there.

22 A. We're there. Make it bigger. Yeah, that's
23 easier.

24 Q. So would you agree with me that this
25 paragraph looks fairly similar to the ones we

1 election management, Georgia's election management
2 system, software that stood behind the machinery.

3 Q. And towards the end of that paragraph you
4 state, quote, "I have little reason to believe in
5 the integrity of any Georgia election under that
6 system." Do you see that?

7 A. Yes.

8 Q. And when you say you have little reason to
9 believe in the integrity, what do you mean by that?

10 A. I mean that -- that running elections on
11 systems that are not verifiable, which I think we
12 have done much to demonstrate in this case, suggests
13 that there isn't -- it's not rational to just
14 believe it, that the system is fine and dandy.

15 Q. So you don't believe in the results of any
16 election in Georgia under that system?

17 A. I didn't -- I didn't say that.

18 MS. ELSON: Yeah. Objection. That
19 mischaracterizes testimony.

20 A. What I have said and what I will continue
21 to say is that without evidence of the actual
22 recording and counting of votes in a reliable
23 transparent way, there is always the question of
24 whether the elections are being operated fairly and,
25 more importantly to me personally, whether my vote

1 counted. I don't know that that vote has counted.
2 I would like to know that. And every time I vote on
3 a system that is not reasonably secure, I can't know
4 that I have participated in the democratic process
5 in a meaningful way. That's the source of the harm
6 here.

7 Q. So that harm there is the, for lack of a
8 better term, the feeling of not counting? Is that
9 somewhat accurate?

10 A. I certainly wouldn't put it that way. When
11 you go to the poll, you intend to have a voice in
12 the governance of your municipality, your state,
13 your city, your whatever, the country as well. And
14 it would be a really important thing for every
15 citizen to know that when they do that, it matters.
16 And for me, it's a hugely important thing to know
17 that when I do it personally, it matters. And when
18 I went to the poll with my 11-year-old daughter, I
19 would like to be able to look her in the eye and say
20 the thing I am doing today matters, and when you're
21 old enough, it's going to matter to you. And the
22 tragedy was I was voting on a system that I knew
23 wasn't necessarily capturing my intent, my vote.
24 And so I might have been expressing my opinion, my
25 voice in the democratic process, but it might have

1 just been getting blown away in the wind. And so I
2 felt somehow cheated by that experience.

3 It still bothers me because as I became
4 more involved in this, and I would communicate with
5 my children what I was doing and why I was doing it.
6 And I know that it undermines something of their
7 feeling about the importance of going to vote if the
8 system is not reasonably reliable in recording that
9 vote. That's what I complain about.

10 The constitution says I should have a
11 meaningful voice, because I am a citizen of the
12 United States in the state of Georgia in DeKalb
13 County. And I take that to mean something. And I
14 would like to know that when I express that opinion,
15 somebody hears it, that it gets counted, and it gets
16 counted along with the votes from everybody else who
17 voted for whatever reasons and however much they
18 care, they expressed their opinion. And all of that
19 gets tallied up and the winners win and the losers
20 lose and government works because everybody knows
21 they're involved in it. I frankly don't know if I'm
22 involved in it the way that I intended because I
23 don't know for certain that this system is doing
24 what it's intended to do but not trustworthy to do.
25 Is that clear?

Curling, Donna v. Raffensperger, Brad

Page 153

CERTIFICATE

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the colloquies, questions and answers were reduced to typewriting under my direction; that the transcript is a true and correct record of the evidence given upon said proceeding.

I further certify that I am not a relative or employee or attorney of any party, nor am I financially interested in the outcome of this action.

I have no relationship of interest in this matter which would disqualify me from maintaining my obligation of impartiality in compliance with the Code of Professional Ethics.

I have no direct contract with any party in this action and my compensation is based solely on the terms of my subcontractor agreement.

Nothing in the arrangements made for this proceeding impacts my absolute commitment to serve all parties as an impartial officer of the court.

This tr



LaRita J. Cormier, RPR, CCR No. 2578